Smith v. The Abandoned Vessel

Doc. 90

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

NATHAN SMITH *Plaintiff*, v. THE ABANDONED VESSEL, *In Rem*	§ § § § § § § §	CIVIL ACTION NO. 4:07-00784

INTERVENOR TEXAS HISTORICAL COMMISSION'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF THE COURT:

Defendant/Intervenor Texas Historical Commission (Hereinafter, "Commission"), subject to its Motion to Dismiss or For Judgment, files its Original Answer to Plaintiff's First Amended Original Complaint as follows:

AFFIRMATIVE DEFENSES

The Commission raises and incorporates in its Original Answer as affirmative defenses the issues and defenses raised in its Motion to Dismiss or For Judgment, filed simultaneously herewith.

ADMISSIONS AND DENIALS

1. Commission has no knowledge or information concerning Par. 1 and can neither admit nor deny this allegation..

2. Deny Par. 2.

3. Commission has no knowledge or information concerning Par. 3 and can

Dockets.Justia.com

neither admit nor deny this allegation.

4. Commission has no knowledge or information concerning Par. 4 and can neither admit nor deny this allegation.

5. Commission denies that this lawsuit is within the admiralty and maritime jurisdiction of the Court.

6. Commission denies all allegations in Par. 6.

7. Commission denies all allegations in Par. 7.

8. Commission denies all allegations in Par. 8.

9. Commission has no knowledge or information concerning time, money and effort invested by Mr. Smith and can neither admit nor deny this allegation.

10. Commission has no knowledge or information concerning Par. 10 and can neither admit nor deny this allegation.

11. Commission has no knowledge or information concerning Par. 11 and can neither admit nor deny this allegation, except that Commission denies the existence of the alleged vessel.

12. Commission denies allegations in Par. 12.

13. Commission incorporates by reference its answers to Par. 1-12.

14. Commission denies the allegations in Par. 14.

15. Commission denies the allegations in Par. 15.

16. Commission incorporates by reference its answers to Par. 1-15.

17. Commission denies the allegations in Par. 17.

18. Admit allegation in Par. 18, except deny existence of any vessel.

19. Commission denies the allegations in Par. 19.

20. Admit allegation in Par. 20, except deny existence of any vessel.

21. Commission denies the allegations in Par. 21.

22. Commission incorporates by reference its answers to Par. 1-21.

23. Commission denies the allegations in Par 22.

24. Admit allegation in Par. 24, except deny existence of any vessel.

25. Admit allegation in Par. 25 with respect to what Mr. Smith requests, except deny existence of any vessel.

26. Admit authority of Court to enter order, but deny existence of any vessel.

27. Commission incorporates by reference its answers to Par. 1-26.

28. Commission denies the allegations in Par. 28.

29. Commission denies the allegations in Par. 29.

30. Commission denies the allegations in Par. 30.

31. Commission denies the allegations in Par. 31.

32. Commission incorporates by reference its answers to Par. 1-31.

33. Commission has no knowledge or information concerning Par. 33 and can neither admit nor deny this allegation, except that Commission denies the existence of the alleged vessel.

34. Commission has no knowledge or information concerning Par. 34 and can

neither admit nor deny this allegation, except that Commission denies the existence of the alleged vessel.

35. Commission has no knowledge or information concerning Par. 35 and can neither admit nor deny this allegation, except that Commission denies the existence of the alleged vessel.

36. Commission has no knowledge or information concerning Par. 36 and can neither admit nor deny this allegation, except that Commission denies the existence of the alleged vessel.

37. Commission has no knowledge or information concerning Par. 37 and can neither admit nor deny this allegation, except that Commission denies the existence of the alleged vessel.

38. Admit.

39. Admit.

40. Admit.

41. Commission has no knowledge or information concerning Par. 41 and can neither admit nor deny this allegation.

42. Admit.

43. Commission has no knowledge or information concerning Par. 11 and can neither admit nor deny this allegation, except that Commission admits that the case was not transferred.

44. Commission has no knowledge or information concerning Par. 44 and can

neither admit nor deny this allegation.

45. Commission has no knowledge or information concerning Par. 45 and can neither admit nor deny this allegation.

46. Commission has no knowledge or information concerning Par. 46 and can neither admit nor deny this allegation.

47. Commission has no knowledge or information concerning Par. 47 and can neither admit nor deny this allegation.

48. Commission has no knowledge or information concerning Par. 48 and can neither admit nor deny this allegation.

49. Commission has no knowledge or information concerning Par. 49 and can neither admit nor deny this allegation.

50. Commission has no knowledge or information concerning Par. 50 and can neither admit nor deny this allegation.

51. Commission has no knowledge or information concerning Par. 51 and can neither admit nor deny this allegation.

52. Commission has no knowledge or information concerning Par. 52 and can neither admit nor deny this allegation.

53. Commission denies that Mr. Smith is entitled to any relief.

WHEREFORE, Intervenor Commission asks the Court to Dismiss this case for failure to state a claim, grant the Commission judgment on the pleadings, or, alternatively, enter a judgment that the Plaintiff take nothing by his claims and that the Commission recover such other relief in law or in equity to which it is entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

ANDREW WEBER
First Assistant Attorney General

DAVID A. MORALES
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE
Chief, Environmental Protection and
Administrative Law Division

JOE H. THRASH
State Bar Card No. 19995500
Assistant Attorney General
Environmental Protection and
Administrative Law Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Telephone (512) 475-4685
Fax (512) 320-0167

**ATTORNEYS FOR INTERVENOR
TEXAS HISTORICAL COMMISSION**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been delivered via Certified U. S. Mail, Return Receipt Requested, to counsel of record, on February 3, 2009, as follows:

Ronald B. Walker
Walker, Keeling & Carroll, L.L.P.
210 E. Constitution
P.O. Box 108
Victoria, Texas 77902-0108

Richard A. Schwartz
Schwartz, Junell, Greenberg & Oathout, L.L.P.
909 Fannin Street, Suite 2700
Houston, Texas 77010

JOE H. THRASH